

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

MICK HAIG PRODUCTIONS, E.K.,

Plaintiff,

v.

DOES 1-670

Defendants,

CA. 3:10-cv-01900-N

**AFFIDAVIT OF MATTHEW ZIMMERMAN IN SUPPORT OF
AD LITEM COUNSEL'S PETITION FOR ATTORNEY'S FEES AND EXPENSES**

1. I am an *ad litem* counsel for the Defendants in this matter and a member in good standing of the California State Bar. I have personal knowledge of the matters stated in this declaration. If called upon to do so, I am competent to testify to all matters set forth herein.

2. I am a Senior Staff Attorney at the Electronic Frontier Foundation ("EFF") which is a nonprofit corporation organized and existing under the laws of The Commonwealth of Massachusetts with its principal place of business in San Francisco, California. I have been a Senior Staff Attorney at EFF since January of 2008 and was a Staff Attorney before that beginning in June of 2004.

3. On October 25, 2010, the Court appointed me, Cindy Cohn, and Paul Levy to serve as *ad litem* counsel to the 670 anonymous Defendants for purposes of responding to Plaintiff Mick Haig Productions' motion for expedited discovery.

4. EFF generally represents clients without charge in precedent-setting litigation of national importance involving novel and complex issues arising from the intersection of new

technology with privacy rights, free press and free expression rights, and other civil liberties. Nevertheless, EFF attorneys have hourly rates for purposes of cases in which EFF is entitled to attorneys' fees.

5. My 2011 hourly rate, which is the hourly rate for purposes of this matter, is \$550.00 per hour.

6. My rates are well within the prevailing hourly rates in the San Francisco Bay Area for lawyers of comparable education, expertise, and experience who handle matters of the type involved in this litigation.

7. EFF attorneys have extensive background and experience in cases in which the identities of anonymous speakers have been sought as well as online copyright infringement cases, including mass end-user copyright infringement cases such as the one at issue here.

8. In recent years, in addition to the immediate case, I have repeatedly served as *amicus* or counsel in such matters, including the following examples: *Third World Media v. Does 1-1,243*, Case No. 3:10-cv-00090-JPB-JES (N.D. W.Va. 2011); *FUNimation Entm't v. Does 1-1,427*, Case No. 2:11-cv-00269-DF (E.D. Tex. 2011); *Openmind Solutions v. Does 1-2,925*, Case No. 3:11-cv-00092-GPM-SCW (S.D. Ill. 2011); *USA Technologies v. Doe*, 713 F. Supp. 901 (N.D. Cal. 2010); *Savage v. Council on American-Islamic Relations*, Case No. C 07-6076 SI, 2008 WL 2951281 (N.D. Cal. 2010); *Fix Wilson Yard v. City of Chicago*, Case No. 2008-CH-45023 (Ill. Cir. 2008); *Dominick v. MySpace*, Case No. 2008-L-005191 (Ill. Cir. 2008); *Township of Manalapan v. Moskovitz*, Case No. MON-L2893-07 (NJ Sup. Ct. 2007); *Burd v. Cole*, Case No. CJ 2006 03717 (OK. Dist. Ct. 2006).

9. In addition, EFF has served as *amicus* or counsel in several additional mass end-user copyright infringement cases such as this one, including *VPR Int'l v. Does 1,017*, Case No. 2:11-cv-02068-HAB -DGB (C.D. Ill. 2011); *Call of the Wild Movie v. Does 1-331*, Case No. 1:10-cv-00455-BAH (D.D.C. 2011); *On the Cheap v. Does 1-5,011*, Case No. 3:10-cv-04472-BZ (N.D. Cal. 2010); *West Bay One v. Does 1-1,653*, Case No. 1:10-cv-00481-RMC-JMF

(D.D.C. 2010); *Achte/Neunte v. Does 1-2,094*, Case No. 1:10-cv-00453-RMC-JMF (D.D.C. 2010).

10. Courts have found EFF's rates to be reasonable in a number of recent cases. In *Elec. Frontier Foundation v. Office of the Director of National Intelligence*, Case No. 07-05278 SI, 2008 U.S. Dist. LEXIS 44050 (N.D. Cal. 2008), for example, the District Court for the Northern District of California found EFF's 2007 hourly rates to be reasonable. In *Apple v. Doe I, et al.*, Case No. 1-04-CV-032178 (Cal. Sup. Ct. 2005), EFF was awarded attorneys' fees in accordance with their lawyers' 2006 and 2007 rates. In *In re Sony BMG CD Technologies Litigation*, Case No. 1:05-cv-09575-NRB (S.D. N.Y. 2006) EFF attorneys were paid fees at their hourly rates as part of the settlement of the action in June 2006. In addition, in *OPG v. Diebold*, 337 F. Supp. 2d 1195 (N.D. Cal. 2004), EFF attorneys were paid fees pursuant to a settlement after a summary judgment victory at the organization's 2004 hourly rates.

11. In 2000, I received my Juris Doctor degree from Columbia University.

12. Prior to joining EFF, I worked for the law firm Morrison & Foerster LLP, where I focused on technology and commercial litigation matters, and for the nonprofit advocacy organization The First Amendment Project, where I specialized in privacy and free speech issues. My practice at EFF focuses on civil liberties, free speech, and privacy law and also includes ongoing work in intellectual property law as well as government transparency issues.

13. After a careful review of my time records on the case which were recorded contemporaneously as the work was performed, I estimate the minimum number of hours I spent on the motion for sanctions as follows:

<u>Date</u>	<u>Task</u>	<u>Hours</u>
7-Feb-11	Legal research re: sanctions standards, consult with co-counsel by e-mail regarding motion, draft sanctions motion and related filings.	4.25
8-Feb-11	Draft and edit sanctions motion and related filings, consult with co-counsel by e-mail regarding motion.	5.75
9-Feb-11	Edit sanctions motion and related filings, consult with co-counsel by e-mail regarding motion.	3.0
10-Feb-11	Edit sanctions motion and related filings, consult with co-counsel by e-mail regarding motion.	1.75

11-Feb-11	Edit sanctions motion and related filings, consult with co-counsel by e-mail regarding motion, file motion.	2.25
18-May-11	Review sanctions response, consult with co-counsel regarding response and upcoming reply brief.	1.5
25-May-11	Legal research re: sanctions standards, consult with co-counsel by e-mail regarding reply, draft sanctions reply and related filings.	4.25
26-May-11	Edit sanctions reply and related filings, consult with co-counsel by e-mail regarding reply.	2.25
27-May-11	Edit sanctions reply and related filings, consult with co-counsel by e-mail regarding motion, file reply	1.5
9-Sept-11	Read and evaluate court's order granting sanctions, initiate research regarding fee standards.	.5
4-Oct-11	Research regarding fee standards; draft fee petition and related filings.	2.0
5-Oct-11	Finalize fee petition and related filings.	1.5

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Total hours: 30.5

14. In total, I spent no fewer than 30.5 hours in bringing the motion for sanctions and subsequent fee petition. At my hourly rates, my total fees are \$16,775.

15. Attached hereto as Exhibit A is an Affidavit of Paul Alan Levy, submitted in support of *Ad Litem* Counsel's Petition for Attorney's Fees and Expenses.

16. Attached hereto as Exhibit B is a Declaration of Daralyn Durie, submitted in support of *Ad Litem* Counsel's Petition for Attorney's Fees and Expenses.

I declare under penalty of perjury of the laws of the State of California that the foregoing is true and correct to the best of my knowledge and belief. Executed October 7, 2011, in San Francisco, California.

/s/ Matthew Zimmerman
Matthew Zimmerman